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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,877	10/26/2001	Gregory Owen Miller	9DDW19324CIP	1751
23465	7590	02/12/2004	EXAMINER	
JOHN S. BEULICK C/O ARMSTRONG TEASDALE, LLP ONE METROPOLITAN SQUARE SUITE 2600 ST LOUIS, MO 63102-2740			LUGO, CARLOS	
			ART UNIT	PAPER NUMBER
			3677	
DATE MAILED: 02/12/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/682,877

Applicant(s)

MILLER ET AL.

Examiner

Carlos Lugo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-19 is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This Office Action is in response to applicant's RCE filed on December 8, 2003.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1-5 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 2,948,560 to Rop in view of US Pat No 4,776,620 to Marks et al (Marks).

Regarding claim 1, Rop discloses a latch assembly comprising a handle (20) pivotally mounted to a door. A latch actuator (14) is rotationally couple to the handle and is mounted to the door.

The handle rotates in a first direction and the actuator rotates in a second direction opposed to the first one.

A keeper (11) is engaged to a door retainer projection (16) in a closed position. The actuator is configured to disengage the keeper from the door retainer projection when the handle is actuated.

However, Rop fails to disclose that the keeper is resilient. Rop discloses that the latch actuator is resilient and the keeper rigid.

Marks teach that is known in the art to have a latch assembly with a resilient keeper (60) and a rigid actuator.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a resilient keeper and a rigid actuator, as taught by Marks, into a latching device as described by Rop, because it is mere a reversal of parts because either to have a rigid keeper and a resilient actuator, as described by Rop, or a resilient keeper and a rigid actuator, as taught by Marks, it will not affect the fact of engaging the keeper to the actuator.

As to claim 2, Rop illustrates that the handle comprises an actuator portion in sliding engagement with the latch actuator (the portion at the end of the handle).

As to claim 3, Rop illustrates that the handle further comprises a closed handle stop (the end of the handle near the pivot 21).

As to claim 4, Rop discloses that the handle rotates about a first longitudinal axis (21) and the actuator rotates about a second longitudinal axis (15).

As to claim 5, Rop illustrates that the handle and the actuator are placed on a housing or bracket.

***Allowable Subject Matter***

4. **Claims 6-19 are allowed.**

***Response to Arguments***

5. Applicant's arguments filed on December 8, 2003 have been fully considered but they are not persuasive.

Regarding applicant's arguments that Rop fails to disclose the invention as claimed in claims 6-10 and 16-18 (Page 6 Line 5), the rejection is withdrawn

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because of the amendment. Rop fails to disclose a dishwasher with a latch assembly as claimed in claims 6,11,16 and 19.

As to applicant's arguments that Rop, as modified by Marks, fails to disclose the invention claimed in claims 1-5 (Page 7 Line14), the rejection stands.

Rop only fails to disclose that the keeper is resilient. Rop discloses that the latch actuator is resilient and the keeper rigid. Marks is used to teach that is known in the art to have a latch assembly with a resilient keeper and a rigid actuator. This limitation will not affect the fact of engaging the keeper to the actuator; therefore, it would be obvious to have a resilient keeper and a rigid actuator.

As to applicant's arguments of obviousness (Page 8 Line 2), a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill without any specific hint or suggestion in a particular reference. *In re Bozek*, 416 F. 2d 1385, 1390 163USPQ545, 549 CCPA 1969.

As to applicant's arguments that there is no motivation for the combination (Page 8 Line 23), Rop fails to disclose that the keeper is resilient. Rop discloses that the latch actuator is resilient and the keeper rigid. Marks teach that is known in the art to have a latch assembly with a resilient keeper and a rigid actuator.

The reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. *In re Gazda*, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

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As to applicant's arguments that the art teaches away (Page 9 Line 3), applicant is reminded that simply that there are differences between two references is insufficient to establish that such references "teach away" from any combination thereof. In re Beattie, 974 F.2d 1309, 1312-13, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992).

As to applicant's arguments that Rop, as modified by Marks, fails to disclose a door latch assembly for a door including a door retainer projection and a rounded hooded portion (Page 9 Line 15), this limitation "for a door including a door retainer projection and a rounded hooded portion" is consider as intended use.

A recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus, which differentiates it from a prior art reference disclosing the structural limitations of the claim. In re Pearson, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); In re Yanush, 477 F.2d 958, 177 USPQ 705 (CCPA 1973); In re Finsterwalder, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d 937, 136 USPQ 458 (CCPA 1963); Ex parte Masham, 2 USPQ2d 1647 (BdPatApp & Inter 1987).

Furthermore, the applicant fails to disclose why is that important to have a rounded hooded portion and how this portion affects the latch assembly. Therefore, the rejection stands.

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***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number is 703-305-9747. The examiner can normally be reached on 9-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

February 10, 2004.

Carlos Lugo  
Examiner  
Art Unit 3677



**WILLIAM L. MILLER**  
**PRIMARY EXAMINER**